

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

FILED
OCT 31 2003
US DISTRICT COURT EDNC
BY _____ DEP. CLERK

FELIPE DE JESUS DE LUNA-GUERRERO and)
BALDOMERO GUTIERREZ DE LUNA, on)
behalf of themselves and all other similarly)
situated persons,)

Plaintiff,)

v.)

THE NORTH CAROLINA GROWER'S)
ASSOCIATION, INC., and MARCUS)
THIGPEN, on behalf of himself and all)
other similarly situated members of the)
North Carolina Growers Association, Inc.,)

Defendants.)

Civil Action No.:
4:02-CV-173-H(4)

AFFIDAVIT OF STAN EURY IN SUPPORT OF NAMED DEFENDANTS'
OPPOSITION TO PLAINTIFFS' AMENDED MOTION
TO SEND COURT-APPROVED NOTICE TO PUTATIVE MEMBERS OF
COLLECTIVE ACTION PURSUANT TO 29 U.S.C. §216(b)

The Affiant, having been duly sworn, affirms and states as follows:

1. My name is Stan Eury. I am Executive Director of Named Defendant North Carolina Growers Association ("NCGA"). I have personal knowledge of the facts stated herein.

2. NCGA is a not-for-profit cooperative of agricultural employers. Our mission is to assist our farmer/members with successfully negotiating the often complex and confusing H-2A program. NCGA's entire regular, full-time staff consists of eleven

employees. In addition to these, NCGA has six bilingual field representatives who work on a temporary/seasonal basis. This small complement is required to process approximately 10,000 H-2A workers per year for approximately 1,000 member growers.

3. During the harvest season, our staff is fully committed to ensuring that our member growers have sufficient labor to harvest their crops. NCGA is responsible for completing paperwork on each worker that by law must be filed with the U.S. government in a timely manner. In addition, we are often faced with last-minute decisions – for example, if one member grower is unable to provide work because of weather or other conditions while another grower has a greater-than-normal need for laborers, NCGA must coordinate and try to get the workers from the farm with no work transferred temporarily over to the farm that has a labor shortage. NCGA staff is faced with these and similar issues on an almost continuous basis during the harvest season.

4. As a result of these conditions and the nature of our work, NCGA has never directly contacted more than a handful of current H2A workers. It would create a severe hardship for NCGA to have to hand-deliver collective action notices to each putative plaintiff in this litigation.

5. Moreover, because the H-2A workers are immigrants (primarily from Mexico), they return to Mexico at the end of the harvest season. Thus, I cannot conceive of any way that NCGA would be able to hand-deliver notices to any workers who were no longer working for NCGA growers.

6. Finally, Farmworkers Legal Services has frequently (and falsely) accused NCGA of improperly attempting to influence the H-2A workers – even of intimidating the workers. Plaintiffs’ attorney Robert Willis also did this indirectly by filing a Declaration of Mary Lee Hall that made the same accusations. I am concerned that, if NCGA were responsible for hand-delivering notices and some did not get delivered, NCGA would be accused of neglect, or even willful behavior. If the notices were delivered and the litigation went badly for the plaintiffs, I would be concerned that plaintiffs’ counsel would accuse NCGA of trying to intimidate the members of the class while hand-delivering the notices. Because the plaintiffs’ counsel has made it very plain that they do not trust NCGA, I think it would make much more sense for the plaintiffs’ counsel – through the use of a neutral third party, as described in our opposition to the plaintiffs’ First §216(b) Motion – to be responsible for issuing notices to the members of the putative class. For the same reasons, I do not believe it would be appropriate for the NCGA member growers to issue the notices to the workers.

This the ____ day of October, 2003.

Stan Eury
Stan Eury

SWORN TO AND SUBSCRIBED BY ME
This the 29th day of October, 2003

Jennette Armstrong
Notary Public
My Commission Expires: May 8, 2007

